JD(ATL)–34—03
McComb, MS

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
ATLANTA BRANCH OFFICE

CROFT METALS, INC.

and Case No. 15-CA-16520

ANNA CLAYTON, AN INDIVIDUAL

and Case No. 15-CA-16698

INTERNATIONAL BROTHERHOOD OF
BOILERMAKERS, IRON SHIP BUILDERS,
BLACKSMITHS, FORGERS, AND
HELPERS

Kevin McClue, Esq. for the General Counsel.
Norman A. Mott III, Esq. (*Shields, Mott & Lund L.L.P.*), of New Orleans, LA, for the Respondent.
Mr. Charles Brock, of Connersville, IN, for the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers, and Helpers.

DECISION

Statement of the Case

JOHN H. WEST, Administrative Law Judge. This case was tried in McComb, Mississippi on January 28 – 31, 2003. The charge in Case No. 15-CA-16520 was filed by Anna Clayton on March 22, 2002 and it was amended twice. The charge in Case No. 15-CA-16698 was filed by the International Brotherhood of Boilermakers, Iron ship Builders, Blacksmiths, Forgers and Helpers (Boilermakers) on August 2, 2002, and it was amended once. A consolidated complaint and notice of hearing was issued on September 30, 2002. It alleges that Croft Metals, Inc. (Respondent or Croft) (a) violated Section 8(a)(1) of the National Labor Relations Act, as amended (Act), by threatening employees with termination because of their activities on behalf of the Southern Council of Industrial Workers and its affiliate Local Union No. 2280, United Brotherhood of Carpenters and Joiners of America, AFL-CIO-CLC (Carpenters) and the Boilermakers, and (b) violated Section 8(a)(1) and (3) of the Act by (1) terminating its employee Ora Mae Dawson on February 5, 2002, (2) issuing a negative performance evaluation to its employee Anna Clayton in November 2001, (3) scrutinizing Clayton more closely in the performance of her job since November 2001, (4) imposing more onerous working conditions on Clayton since November 27, 2001, (5) issuing a warning to Clayton on November 27, 2001, (6) issuing Clayton a three-day suspension on January 24, 2002, (7) removing Clayton from her desired position as a material handler on January 24, 2002, and (8) terminating Clayton on January 30, 2002. Allegedly the Respondent engaged in this conduct against Dawson and Clayton because they assisted the Carpenters and/or Boilermakers and engaged in concerted

activities, and to discourage employees from engaging in these activities. The Respondent denies violating the Act as alleged.

On the entire record,[1] including my observation of the demeanor of the witnesses, and after considering the briefs filed by General Counsel and the Respondent on April 18, 2003, I make the following

Findings of Fact

I. Jurisdiction

The Respondent, a corporation, manufactures aluminum and vinyl doors and windows at its facility in McComb, Mississippi, where it annually purchases and receives goods valued in excess of $50,000 directly from points located outside the state of Mississippi and it annually sells and ships from its McComb facility goods valued in excess of $50,000 directly to points outside the state of Mississippi. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Carpenters and the Boilermakers are labor organizations within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

A.Background

For about 25 years the Carpenters were the exclusive collective bargaining representative of Croft's production and maintenance employees. The last three-year collective bargaining agreement between Croft and the Carpenters was effective from December 1, 1996 through November 30, 1999. Respondent's Exhibit 25. Croft and the Carpenters entered into a Letter of Understanding, Respondent's Exhibit 21, on November 1, 2000 which extended and modified the prior collective bargaining agreement, and which was effective from November 4, 2000 through November 30, 2001, continuing in force and effect from year to year thereafter unless either party notifies the other in writing at least sixty (60) days prior to any expiration date of its desire to terminate, amend or revise. Prior to November 30, 2001 the Union notified Croft in writing that it wanted to enter into negotiations. After November 2001 the Company and the Union negotiators reached an agreement which was rejected by the membership twice. By letter dated January 11, 2002, Respondent's Exhibit 33, Croft advised the Carpenters that it was immediately ceasing dues check off because a contract had not been reached since the expiration of the prior agreement on November 30, 2001. Croft did not have a formal agreement with the Carpenters extending the collective bargaining agreement at that time. In March 2002 Croft received notification that members of the Carpenters had filed a decertification petition with the National Labor Relations Board (NLRB).

B. Ora Mae Dawson

[1] The hearing in this matter was continued on January 31, 2003 to accord General Counsel the opportunity to review subpoenaed documents. During a subsequent telephonic conference on February 12, 2003 the parties indicated that they did not want a continued hearing but rather they only wanted to introduce additional exhibits. By my order dated February 13, 2003 they were accorded the opportunity. By my order dated March 13, 2003 General Counsel's Exhibit 28 and Respondent's Exhibits 29, 35, 40 and 41 were received in evidence, and the record was closed.

Dawson had been an employee of Croft for 21 years. She was a Lead Person for approximately five years until January 2001. Dawson testified that she had a worker on her line, Gabe Cutrer, who would always curse at her when she asked him to do anything; that she told her supervisor about it and her supervisor, Jimmie Dykes, said that he would put the involved worker in his lap and spank him; that she then spoke to Grady Cutrer, Croft's Personnel Director, about the situation; that subsequently she was removed from the Lead Person position; that she believed that Gabe Cutrer was Dykes' son; and that she gave a grievance with respect to losing the Lead Person position to Charles Coleman, who was the President of the Carpenters' Local.

On December 10, 2001 Dawson filed a charge with the NLRB in Case No. 15-CA-16400 against Croft, General Counsel's Exhibit 8, alleging as follows:

> In January 2001 the Company discriminated against Ora Mae Dawson because of her union activity and her protected activities of complaining about G. [Gabe] Curter['s] constant swearing at her. Supervisor Jimmie Dykes (White) [in original] removed her from her job of four years and gave the job to G. [Gabe or Gabriel] Curter, his son.
>
> The union president and business agent and executive secretary promised it was being taken care of. (Local 2280 of United Brotherhood of Carpenters Southern Council of Industrial Workers. [)] September 2001 I learned that the union refused to file a grievance.

On December 12, 2001 Dawson was called to the office of Grady Cutrer. Dawson testified that Grady Cutrer asked her why she filed the charge when they had a union; that Coleman came into the office while she met with Grady Cutrer, who asked them to go outside and discuss the charge while he made a telephone call; that she told Coleman that he did not know anything about the charge filed with the NLRB because she did not discuss it with him prior to filing it; that she and Coleman were called back into Grady Cutrer's office and he asked her who was her representative; that she told Grady Cutrer that it was the NAACP and he would have to talk to them; that Grady Cutrer told her and Coleman to go back to work; and that Grady Cutrer did not tell her that she did not have to discuss the charge with him. Later that day Grady Cutrer called Dawson back into his office. Dawson testified that Vic Donati, who is the Vice President of Human Resources, was in the office; that Grady Cutrer left the office and Donati pointed his hand at her and said "You're lying, you know you're lying, why are you telling these lies"; that she then asked, more than once, if she could have Anna Clayton in the office with her but Donati denied the requests; that Donati said "You know you got a union here"; that Donati then told her to go back to work; and that Donati did not tell her what her rights were as to whether she had to talk to him regarding the charge she filed with the NLRB. On cross-examination Dawson testified that Donati did not tell her that the meeting was not going to lead to any discipline against her.

On December 17, 2001 Dawson filed a grievance on a Carpenter's grievance form, General Counsel's Exhibit 9, alleging as follows:

> On the above date [December 12, 2001], Mr. Donati, called Mrs. Dawson to the personnel office – between the hours of 2:30 – 3:00 pm with a disruptive conduct [sic] of threatening, harassment, argumentative, vulgar and belligerent manner of retaliation against her for filing discrimination (EEOC) complaint – also denied Union Representation.

In the "Adjustment Desired" portion of the form the following appears: "The union requests that all information concerning Mrs. Dawson be address[ed] [to] the Union Representative, Anna Clayton." Dawson signed the form as grievant, Clayton signed the form on the line for steward (At the time she was Vice President of the Local.), and Grady Cutrer signed the form as Company Representative who received the grievance. Grady Cutrer rejected the grievance because, according to his testimony, it had no merit. When asked by Croft's attorney what he did to investigate the grievance, Grady Cutrer testified that he "was there at the time frame that's specified on here, between 2:30 and 3:00 p.m. … and nothing happened." (transcript page 403 and 404) Grady Cutrer answered "No, sir" to the following questions of Croft's attorney:

> Q. There was no disruptive conduct or threatening harassment or arguments or vulgar language and belligerent manner or retaliation against Ms. Dawson expressed by anyone?
>
> ….
>
> Q. Did Mr. Donati behave in any inappropriate way <u>while you were around</u>?
>
> ….
>
> Q. Did Ms. Dawson request the presence of Mr. Coleman in that meeting? [Transcript page 404]

On cross-examination Grady Cutrer testified that Donati came to the plant that day to see him "and the specific issues of why Ms. Ora Mae was there, I do not remember." (transcript page 443)

Donati testified that he met with Dawson concerning the charge filed with the NLRB; that he was at the plant and he asked Dawson to meet him in the personnel office; and that he

> asked her [Dawson] what was going on here. …. and I asked her why did she take the direction to lie on the union and the company. She said, I want my steward up here. I said, you don't need your steward up here. There's no discipline; there's no discharge. I'm just curious. Well I'm not going to tell you anything without my steward. I said, well that's fine then. I said, go back to work. That was the end of it. [transcript page 571]

Donati further testified that he did not threaten Dawson, he did not raise his voice at her, and he did not shake his finger in her face. On cross-examination Donati testified that he did not telephone Grady Cutrer to tell him that he was coming to the plant from the corporate offices in McComb; that when he arrived at the plant he did not ask Grady Cutrer if he could use his office because Grady Cutrer was not in his office at the time; that he had a personnel clerk tell Dawson's supervisor to release her to come and talk to him; that Grady Cutrer was not around when he spoke with Dawson; that he could not remember whether it was a week or two weeks later that he told Grady Cutrer that he had spoken with Dawson at the plant; and that he told Grady Cutrer what he spoke to Dawson about at the plant before she was discharged.

By letter dated January 18, 2002, General Counsel's Exhibit 10, the Acting Regional Director for Region 15 of the Board advised Dawson, as here pertinent, as follows:

> Section 10(b) of the Act prohibits the issuance of a complaint concerning conduct that

occurs more than six months prior to the filing and service of a charge. Inasmuch as your were removed from your position in January 2001, and the charge was not filed until December 10, 2001, approximately 11 months after this conduct occurred, Section 10(b) of the Act precludes further action by this agency concerning this allegation.

With regard to your assertion that your union has refused to represent you, you may pursue this allegation by filing a separate charge against the Union.

I am, therefore, refusing to issue a complaint on your charge.

On January 23, 2002, according to the testimony of Dawson, she saw Lead Person Joann Deer call supervisor Dykes and Plant Manager John MacDougal over and talk with them. Dawson testified that they came over to her and MacDougal said "You refused to put labels on"; that she said "no sir" ; that MacDougal then said "Whatever they tell you to do, you do it, you hear what I say"; and that she said "Yes sir"; that she did not refuse to put labels on, she was over there putting labels on when MacDougal came over there; and that Deer did not repeatedly ask her to apply labels to the windows and she did not refuse to do it.

MacDougal, who was retired when he testified at the trial herein,[2] testified that he was Croft's Director of Manufacturing and while walking down the main aisle of the plant he observed a confrontation between Dawson, Dykes and Deer having to do with Dawson's refusal to do work assigned to her, namely putting labels on product; that he heard Dawson restate her refusal to do the job; that he told Dawson that if she continued to refuse to do the work, she would be discharged; that he told Dawson that she would be discharged if she refused again in the future to do whatever she was assigned to do by her supervisor; and that Dawson did go back to work. MacDougal identified Respondent's Exhibit 2 as an "AVOID VERBAL ORDER" (AVO), dated January 23, 2002, which relates to the incident. The document is signed by Grady Cutrer and indicates that MacDougal told Dawson that the next time she refused to do as instructed, it would be viewed as insubordination and she would be terminated. On cross-examination MacDougal testified that it is irrelevant if Dawson was asking why she had to do it, in that if she was instructed to do it, that should have been enough. Grady Cutrer testified that he and MacDougal met with Dawson in MacDougal's office and MacDougal told Dawson that if she refused to do as instructed again, it would be insubordination and she would be terminated; and that an "avoid verbal orders document is simply a record of a meeting that took place. It has no discipline enforcement value to it, other than just documenting the meeting, and I did this frequently." (transcript page 408)

Dykes testified that Deer had asked Dawson to put labels on the windows and Dawson asked him to get someone else to put the labels on because it was not her job; that MacDougal walked up and overheard Dawson, and he told her that she was to do what she was asked to do; that Dawson put the labels on; and that Dawson was not written up over this incident, she was just given a verbal warning. On cross-examination Dykes testified that he was not aware that Grady Cutrer called Dawson into his office and spoke to her about not putting labels on.

Deer testified that on February 5, 2002 Dawson was an auto fab operator, who was responsible for cutting parts for frames; that Dawson had voluntarily left her auto fab job and Dawson was framing when she asked Dawson to frame for the rest of the day; that the lady who Dawson was helping got sick and supervisor Jimmie Dykes told her, Deer, to ask Dawson to

[2] At the time of the trial herein he was not receiving a pension or any type of benefit from Croft, and he did not have any consulting agreement with Croft.

frame for the rest of the day; that she did not hear Dawson refuse to do the framing job that day but Dawson did ask why she had to frame for the rest of the day when she already had her job to do, and why Gabe Cutrer couldn't frame; that she had not asked Gabe Cutrer to frame; and that she asked Dykes to handle the problem since she was running a saw at the time.

Regarding February 5, 2002, Dawson testified that she was working as an auto fab operator; that she ran out of material; that her table was being loaded with material by Gabe Cutrer and she went to the framing table to keep busy until her table was loaded up; that it hurt her arm to frame; that a framer, Betty, got sick and Deer told her, Dawson, that she was going to have to frame[3]; that she told Deer that it was hurting her arm and Deer told her that she would have to speak with Dykes; that 10 minutes later Dykes came up to her while she was still framing and she had the following conversation with Dykes:

> He said, Miss Ora Mae, if I have to take you to the office, they're going to fire you because you've been fooling around with that union. I said, Jimmy, I'm doing my work, I ain't never said I wasn't going to do anything, it just hurts my arm – because he knew I had had surgery, I had my breast taken out for cancer. And he said, well, you know if I take you in that office, they're going to fire you. So he let me frame for a while longer, then [Deer] came [and] took me to a screen table [to cut screens]. [Transcript page 75]

At the 9:30 break she went to the office and told Grady Cutrer that Dykes threatened to fire her and that she was doing her work, and she did not refuse to do her work. Grady Cutrer told her to go back to work. Dawson testified that she then helped Deer load some screens on a pallet and then Deer told her to bring her purse and come to Grady Cutrer's office; that she then had the following conversation with Grady Cutrer:

> … Grady said, I'm terminating you because you refused to do your work. I said, No, sir, I've been doing my work. I said, I never refused to do it. He said, you wouldn't frame. I said, Yes, sir, I was framing till they moved me off the framing table, I never refused to do anything. And he said, well, you're terminated. [Transcript page 76]

Dawson testified that Grady Cutrer did not ask her to frame and she did not refuse to frame; that she did not refuse to do any work when she spoke with Grady Cutrer at that time; and that Grady Cutrer did not say that she was terminated because it was her third write-up in a nine-month period.[4]

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[3] Dawson had cancer surgery in September 1999. She returned to work at Croft in March 2000. Grady Cutrer told her that since she was a Lead Person she would not be picking up anything heavy. General Counsel's Exhibit 11 is a note from Kelvin B. Raybon, M.D. dated "2/28/00" which indicates as follows: "Mrs. Dawson may return to work on 3/2/00; no lifting of >15 lbs." After she was removed as Lead Person, Dawson received help loading her table when a material handler was available. She had told Dykes that while she could lift, it would hurt her arm.

[4] On September 6, 2001 Dawson received a disciplinary warning from Dykes, Respondent's Exhibit 3, for gross negligence as a saw operator. Dawson wrote on the form that she had operated the saw for 8 days and had never been on a saw like this. Dawson testified that she had received 8 days of training on that saw when the incident occurred. On October 30, 2001 Dawson received a disciplinary warning, Respondent's exhibit 4, for cutting screens the wrong size which resulted in 56 screens being scrapped. Dawson testified that the saw was cutting wrong and immediately after the incident MacDougal had maintenance fix the saw measurement set up which was wrong. Dawson watched the repair being made and when she

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Dykes testified "I ain't never mentioned no union [sic]" (transcript page 467), and "I have never mentioned no union [sic] to Ms. Ora Mae [Dawson]. I didn't mention no union [sic] to nobody." (transcript page 487)

Coleman, who is a Lead Person with Croft and, as noted above, was also the President of the involved Carpenters' Local for about six years, testified that he attended a grievances meeting in March 2002 with union representative Fitzhugh, and with MacDougal, Grady Cutrer, and Donati present for Croft; that when Fitzhugh asked about Dawson's grievance which alleges that Donati harassed her, Donati said "mother fuck that bitch and the horse or mule … [that] she ran in on" (transcript page 321); that he could not remember if Dawson was still employed by Croft when he attended this meeting; and that he wrote a note regarding this meeting, General Counsel's Exhibit 26. On cross-examination Coleman testified that the note has "3 - - 02" at the top; that he was sure that this meeting occurred in March 2002; and that he was certain that Fitzhugh, Grady Cutrer, and Donati were present. Grady Cutrer testified that this meeting was held before he turned in his resignation on February 20 or 21, 2002; that at the meeting there was some general discussion denying that Donati was acting in any way disrespectful; that he did not recall Donati saying at this meeting "mother fuck Dawson and the horse she rode in on"; that if Donati had said that he would remember it; and that he has known Donati for 23 years and he has never seen Donati get up in an employee's face and angrily demean the employee. Donati testified that he does not use the term "mother fucker"; that he has never referred to Dawson as a bitch; that he has never referenced the horse she rode in on; and that he does not have any animosity toward Dawson.

Grady Cutrer, who was Croft's plant Personnel Manager at the time,[5] testified that he terminated Dawson for the following:

> I had received a phone call from … Ms. Dawson's supervisor, telling me that he had a situation with her where she was asked to do a particular job and that she had refused to do it, so I asked him to send Ms. Dawson to me, and so she arrived at my office , and I explained to her, Ms. Dawson, I understand that you've been asked to do something and you have not done it; you've refused to do it. And she said, it's not my job. And I said, Ms. Dawson, you've got to understand that when your supervisor asks you to do a job, that becomes your job, to do what you're asked to do. And she said, Well, I've got my own job to do, and that's not my job.
>
> I then told her, I said, Ora Mae, I said, your refusal to do as you're asked to do

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used the saw after maintenance worked on it she had no problems with the saw. Dawson filed three grievances over the above-described September 6, 2001 disciplinary warning. Respondent's Exhibit 6. In the first she sought pay for the job she was doing, lost wages and lost time. In the second she indicates that the saw is operated under special leadman A at all times and she requested that the discipline be removed and she be made whole. And in the third Dawson requested that she receive leadman pay for the involved period. All three grievances were rejected by Croft. Dawson spoke to the Carpenters' representative, Jones Fitzhugh, about the three grievances but she did not hear back from him. MacDougal testified that Dawson did not cut one piece and then measure it before cutting the rest of the 50 or so parts. Respondent's Exhibit 13 is Grady Cutrer's rejections of the three grievances filed by Dawson on "9-10-01." Dykes testified that there were some 50 screens that were cut wrong and they had to scrap them all.

[5] He worked for Croft from 1973 until March 2002.

> can lead you to a termination. And she said, Well, she said, that's not my job; I've got my own work to do. I said, Ora Mae, you must do what you've been asked to do, and if you don't do it, then I'm going to consider that insubordination, and I'll terminate you. And her reply to me was, You do whatever you think you've got to do; I'm not doing it; that's not my job. And at that point, I terminated her. [Transcript page 391]

Grady Cutrer further testified that this took place in his office; that during this conversation with Dawson she never said that she could not do the job she was asked to do because she was physically hurting; that she was not on light duty when she was terminated; and that Respondent's Exhibit 11 is his memorandum to Dawson's personnel file regarding his above-described conversation with Dawson during which he terminated her. The memorandum indicates that Dawson was terminated for insubordination and the accumulation of three written warnings within a nine-month period, and Dawson's termination slip or status change report, Respondent's Exhibit 12, gives "insubordination" as the reason for termination.[6] Grady Cutrer testified that prior to his decision to terminate Dawson, (a) he never discussed with Donati the fact that Dawson filed a charge with the Board and (b) he did not know about the charge. On cross-examination Grady Cutrer testified, when asked if Deer told him that Dawson did not stop framing, "I don't believe that Ms. Dawson ever started framing …." (transcript page 459)

Regarding Dawson's last day at Croft, Dykes testified that the lady who Dawson was framing with had to leave work and he had Deer tell Dawson to frame; that Deer came and got him telling him that Dawson did not want to frame; and that the following then occurred:

> So I told … [Dawson] … to frame today …. [and Dawson] said… [that she did not] feel like framing all day today. She said, you can get somebody else. … There's too many people in here you can get to frame. I said, you're an experienced framer; you know how to frame; frame today. She did not. She went back there and ran her small auto fab and was standing around. [Transcript page 477]

Dykes further testified that he saw Dawson go back to the auto fab; that he told MacDougal that Dawson was refusing to frame; that MacDougal told him to get with Grady Cutrer; that Grady Cutrer told him to send Dawson to him; that he told Dawson to go to personnel; that it was not break time; and that Dawson never did come back to the floor. Dykes also testified that Dawson never complained to him about not being able to do some of the work that she was required to do; and that she did not tell him on her last day of work that her arm hurt her that day when she was refusing to frame.

Grady Cutrer testified that he invited employee Archa Williams on February 6, 2002 to come to his office; that he asked her if she observed Dawson's refusal to do work; that he typed what she told him and asked her to sign it, Respondent's Exhibit 16; and that he obtained the statement before a grievance was filed because

> it's just good business practices. If you've got issue - - especially in a separation issue, I investigate to find out as best as I can the truth of what happened, and I always try to find if there's any witnesses to the incident or what have you, and that's how I - - my inquiry identified Ms. Williams. [Transcript pages 400 and 401]

When asked by Croft's attorney "Why would you need to investigate when you made the

[6] Respondent's Exhibit 26 is a copy of Croft's payroll record, "Software Plus," which concerns Dawson and reflects a status change for "insubordination."

decision to terminate her" Grady Cutrer testified that "… I wanted to find out to the best of my knowledge what happened out on the floor from those that were around Ms. Dawson when this took place" (transcript page 401), but he did not feel it was necessary to his decision to terminate. On cross-examination Grady Cutrer testified that he spoke with Williams after he terminated Dawson.

Williams testified that she overheard Deer tell Dawson that Dykes said that Dawson should frame and Dawson told Deer that she, Dawson, could not do that job and her job too, she could not do Gabe's job and her job; that she did not know what happened next because she "just walked on by" (transcript page 517); that she gave a statement to Grady Cutrer, Respondent's Exhibit 16, concerning what Dawson said and she signed it[7]; and that Dawson did not frame when Deer asked her to, Dawson just stood there for a while. On cross-examination Williams testified that she wanted to speak with Deer because she needed maintenance to look at her machine and she is supposed to report this to the Lead Person to use the telephone to call maintenance; that after Deer finished speaking with Dawson, Deer asked her why she was there and she told Deer about her machine; that the conversation between Deer and Dawson was kind of heated so she just left and went to the machine and asked somebody else for the maintenance number; that she left while Deer and Dawson were still talking and so she did not know what Dawson did after she and Deer were finished talking; that while her statement indicates "I saw Ora Mae not do as she was told to do" she meant that Dawson was just standing there talking to Deer; that Dawson could have framed while she was talking to Deer; and that there were bars on the framing table and Dawson might have taken some bars and placed them on the framing table. On redirect Williams testified that if Deer asks an employee to do a job, the employee is supposed to do the job.

When called by the Respondent Deer testified that after Dawson lost her Lead Person job she was not as good a worker as before; that basically all the employees on the line are supposed to do what she asks them to do; that on Dawson's last day with Croft, Ann Strickland got sick and Dykes told her to ask Dawson to frame for the rest of the day; that Dawson asked why she had to frame and why Gabe Cutrer could not frame because Gabe was not doing anything; that she then asked Dykes to speak to Dawson; that Williams was in the area when she and Dawson has their conversation about framing; that when she asked Dawson to frame Dawson was already at the framing table and there were materials to be framed at that time; that she did not remember talking to Williams about her machine being down; that she could not recall if she spoke with Dawson during the remainder of that day but she could have; and that after she spoke with Dykes she went to work on her saw and she did not see where Dykes went.

On February 8, 2002 Dawson filed a grievance with the Carpenters with respect to her termination. The grievance, as here pertinent, indicates "The company alleges the grievant failed to follow work orders." Respondent's Exhibits 14 and 15 are Croft's denial, signed by Grady Cutrer, of the grievance.

The Respondent introduced a Decision of an Appeals Referee of the Mississippi Security Commission, Respondent's Exhibit 9, dated November 25, 2002. The Opinion portion of the Decision contains the following:

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[7] The statement reads as follows:

This morning heard I [sic] Jo Ann Deer ask Miss Ora Mae to frame. Ora Mae said that she was not going to do the job because she had her own job to do. I saw Ora Mae not do as she was told to do.

> In this case, it is the opinion of the referee, that the act of the claimant [Dawson] refusing to perform an assigned task is insubordination, which is a disrespect for authority. The claimant was given at least three chances to perform the duty as directed and she refused. The request of the employer was not unreasonable and the claimant had performed the task of framing in the past. Willful misconduct has been shown within the meaning of the law and the claimant should be disqualified from receiving benefits. The decision of the claims examiner will, therefore, be affirmed.

The findings of Fact portion of the Decision contains the following:

> On February 6, 2002, the Lead Person instructed the claimant to help make frames because they were short of framers. The claimant had performed this task in the past and was capable of performing the job. The claimant told the Lead Person to get someone else to do it because she had other work to perform. The supervisor was advised of the situation and claimant was again instructed to help make frames. The claimant again refused and was told she could report to personnel. While in personnel she was again instructed to perform the task of making frames. When she continued to refuse, the claimant was discharged for insubordination for refusing to perform an assigned task.

Dawson testified that at the time of the trial herein she was appealing the Referee's Decision; that it is not the final decision of the State of Mississippi regarding her unemployment claim; and that Croft did not present any witnesses at the unemployment hearing but Croft did present some documents.

C. Anna Clayton

General Counsel's Exhibit 5 are the published plant rules which were in effect January 2001 through the time of the trial herein. Donati testified that the rules apply to all employees and supervisors at the involved plant; that the rules are strictly obeyed; that he was not aware that there were constantly gambling pools taking place at the plant; that he considers gambling to be rolling dice or playing cards during the course of the workday which would affect production; that he does not consider football pools gambling under the rules and that has been a past practice but such an exception is not specifically stated in the plant rules; and that he cannot recall in his 26 years with Croft anybody being disciplined for gambling. Donati also testified that a person is supposed to be written up every time there is a violation of the plant rules; and that employees should be written up for violating the safety rule regarding the wearing of safety goggles throughout the plant.

Dykes testified that he played football pools at Croft every week they had one from January 2001 to the time of the trial herein; that he bet on the Super Bowl football pool at Croft in January 2003, which Mabel Harrell, who is a Lead Lady, passed around; that he gave Harrell the money for the pool when he was in the break area; that he did not observe Harrell passing the pool out to anyone else but it is his understanding that it is done at break and dinner; and that there has been a pool ever since he started working at Croft 34 years ago.

In June or July 2001 Clayton was a screen roller. She asked Coleman, who as noted above was the President of the involved Carpenters' local, if it would be alright for her to speak to Grady Cutrer about some concerns she had about the wearing of safety glasses, job bids, and the food policy. Clayton testified that Coleman said yes it would be better for some of the employees to go and address some of the issues instead of just him all the time; that she spoke

with Cutrer about the safety glasses, an employee selling watermelons on company premises, and about working conditions; that Cutrer said that he would look into the matters she raised; that she then went back to work and about 10 minutes later her supervisor, Dykes, told her to go to the office of John MacDougal, the Respondent's Vice President of Manufacturing who was in charge of the plant; that Grady Cutrer was also present; that MacDougal told her that Grady Cutrer had informed him about the things she had questioned him about and that the matters she raised were none of her business, none of her concern; that as she was leaving the office MacDougal said "[y]ou come back in here and shut your mouth and you sit down" (transcript page 162); that at that point she asked for him to call her representative, Coleman, and MacDougal said that he did not have to call anyone but he let her leave the office and get Coleman; that MacDougal told Coleman that the situation that Clayton was complaining about was not hers or the Union's concerns; that she said that several employees have complained that, while some employees have been terminated, one employee just wears his safety glasses around his neck, and that one employee was disciplined for bringing food on the premises when she did not; that MacDougal said "I see now that you just want to be a troublemaker … I can make it hard for you … is that what you want" (transcript page 165); and that she told McDonald that she only wanted employees to be treated as fairly and equally as possible and as far as she knew there was nothing in her records which would indicate that she gave the company any kind of trouble. During the 23 years she had worked for Croft before this meeting with MacDougal, Clayton could only remember receiving one written warning, namely in 1989 when she took a day off to be with her sister after her niece had died. On cross-examination Clayton testified that she first became aware of MacDougal being at Croft in June or July 2001; that she never called MacDougal the "white devil" (transcript page 236); that she was not a union official when she met with MacDougal and Cutrer; and that prior to MacDougal becoming Vice President of Manufacturing at Croft, she did not recall ever being written up by Dykes.

MacDougal, who was the Director of Manufacturing at the involved plant from May 15, 2000 until July 15, 2002, testified that in mid-June or July 2001 Clayton came into his office and had a laundry list of things that she wanted to complain about; that Grady Cutrer happened to be in his office at the time; that he told Clayton that most of the items did not seem to be any of her business; that the items she complained about included an employee selling watermelons from the back of his pickup truck in Croft's parking lot, and some people in the plant not wearing side shields on their safety glasses; that as she was leaving she told him that he was a rude person; that he did not wag his finger in her face during this meeting and he did not tell her to shut her mouth and sit down; that he did not recall Clayton during this meeting requesting that Coleman be present; that he did not believe that the rules regarding bringing food into the plant were discussed at this meeting; and that while he may have thought Clayton was a troublemaker he did not tell Clayton that.

In August 2001 Clayton was elected Vice President of the involved Carpenters' local. Clayton testified on cross-examination that one of the reasons she took the position was because the President of the Local, Charles Coleman, was not filing grievances. Clayton testified on cross examination that at some point in time she heard Dykes say "MacDougal said we can file as many grievances as we want to; they're not going anywhere, because you've already filed about 100 now, and they're not going anywhere"; and that this occurred before she met with MacDougal and Grady Cutrer. Coleman testified that sometimes he rode home with Dykes and Dykes told him that MacDougal said that he did not care about Coleman writing grievances because they were not going anywhere but in the office. MacDougal testified that he never said that the union could file all the grievances that they would want but they would go nowhere. And Dykes testified that he never heard MacDougal say that he did not care how many grievances the union filed because they were not going anywhere.

According to the testimony of Clayton, in September or October 2001 Dykes told her that her "attitude - - that … [she] had changed since … [she] became [the Vice President of the Local of the] union," (transcript page 227). Coleman testified that Dykes told him a couple of times that Clayton "didn't want to do her job no more [sic] since she became vice president of the union. Anna didn't used to be like that." (transcript page 319) Dykes testified that Clayton could do a good job but her attitude just got terrible, she did not want to do her job, and it was not because of the union but he did not know what it was.

In September or October 2001 some of the employees work hours were cut from 40 to 30 or 35 hours. Clayton asked Dykes about rotating some of the employees so that all of the employees could get as close to 40 hours as possible. Clayton testified that some of the employees were getting more hours than other of the employees but Dykes told her that MacDougal told him that "he could do any damn thing he wanted to do." (transcript page 180) Clayton testified that while she was no longer working 40 hours a week, she was assigned to roll for both her usual line, Nadine Jackson's line, and also for Julius Garner's line; that normally those lines would be rolled by two separate individuals; that she rolled both lines from September to December, 2001; and that during this period MacDougal watched her doing her work.

On November 1, 2001 Clayton was given her sixth-month evaluation from Dykes, General Counsel's Exhibit 15. Clayton received an overall rating of average but for cooperation Dykes checked off the box for "Reluctant to cooperate and difficult to work with." In the comment section of the evaluation, Clayton wrote that the comment was untrue and it was only made because she had become Vice President of the local union. Clayton also testified that she was not happy with some of the other ratings on this evaluation. All but two of the ratings fell under column 2, which is substandard but progressing. As noted above Clayton received an unsatisfactory rating, column 1, for cooperation. She received a column 4 rating, above average, for attendance. Clayton's evaluation for "5/21/01" was received as General Counsel's Exhibit 14. On it Clayton received an overall above average rating. All of her individual ratings, except two, were in column 3, which is average. The two exceptions, job knowledge and attendance, were in column 4 which is above average. Clayton's evaluation for "11-27-00" was received as General Counsel's Exhibit 13. On it Clayton received an overall above average rating. All of her individual ratings, except one, were in column 3, which is average. The one exception, attendance, was in column 5, which is outstanding.

Respondent's Exhibit 23 are three Clayton evaluations from 1992 and 1993, all of which have overall ratings of average.

After receiving the November 1, 2001 evaluation Clayton spoke with Grady Cutrer who set up a meeting between Clayton and Dykes. Clayton testified that during her meeting with Dykes and Grady Cutrer, Dykes said that every time he asked her to do something she had something to say about it and she did not want to work for Croft; that Dykes said that he did not have a problem with Coleman, who is the President of the involved Carpenters' Local, and if he told Coleman to jump off a building, he would do it; that she told Dykes that she was not going to jump off a building for him or anyone else; and that then Grady Cutrer said that the meeting was not accomplishing anything and they should go back to work.

On "11/26/2001" Clayton received a "DISCIPLINARY WARNING," General Counsel's Exhibit 6, from Dykes for "Rule #1 – 'Failure to Perform Work.' This warning is for poor job performance (low production)." General Counsel's Exhibit 7 is the grievance Clayton filed, with Grady Cutrer's and Donati's denials of the grievance. Donati testified that the prior AVOs (avoid verbal orders) to Clayton he refers to in his denial of the grievance are not in Clayton's

personnel file but he did previously see the AVOs. The three AVOs, which dealt collectively with alleged problems with Clayton's performance in rolling screens and holding up production, are dated May 24 and 30, and October 11, 2001, and they were received as Respondent's Exhibit 1.[8] Clayton testified that she never saw these AVOs while she was employed at Croft; and that the AVOs are not factual in that (a) she never refused any work but she did question Dykes about some of the work he was asking her to do when the employee who was assigned to the job did not do his work and Dykes told her "[y]ou know what Ms. Anna. You're right. I shouldn't have to make you do their work" (transcript page 172), and (b) regarding the October 11, 2001 AVO, Dykes never questioned her about her production.[9] Regarding November 26, 2001, Clayton testified that she was working at her usual work station on Nadine Jackson's line; that in the morning Dykes asked her to go and roll on the other line, Lead Person Julius Garner's line; that she went to the other line but they did not have a part, scallops, that she needed to roll on that line; that Garner brought her the scallops and she worked on that line up to the lunch break or shortly thereafter; that she did not know how many doors she rolled during that period but she was told by Grady Cutrer when she received the above-described warning, with Coleman present, that it was 14 or 15; that Grady Cutrer also told her that she should have rolled 50 to 60 of the involved doors during the involved period; that she never had any written production requirements for the involved doors and Dykes never gave her any instructions regarding how many doors she was supposed to roll per hour or per day; that she told Grady Cutrer that the involved door was the hardest doors that Croft had to roll because how much time it takes to roll the door depends on how the door is cut, the grade of vinyl that is used, and how cold it is, which sometimes requires heating the vinyl; that Coleman told her not to argue but to sign the warning and she did; that on her grievance she wrote that she was performing at her historical performance level[10]; and that before she went to Grady Cutrer's office she had not been told that there allegedly was a problem with her performance, and the warning was already prepared when she entered the office. On cross-examination Clayton was asked what was the easiest door to roll and how many of those doors she could roll in a day.

With respect to the November 26, 2001 warning, Coleman testified that he signed the following, General Counsel's Exhibit 25:

Statement of Charles Coleman:

On November 26, 2001 the following persons were present when Mr. Anna Clayton was given a written warning for poor job performance.

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[8] A more complete copy of these AVOs was received as Respondent's Exhibit 20.

[9] Dykes, who did not specifically deny Clayton's testimony about these three AVOs, testified that his May 24, 2001 note refers to Clayton. The unsigned "INTER-DEPARTMENTAL CORRESPONDENCE" indicates that he asked "her" to roll specified screens, she asked him to get someone else to roll them, he told "Anna" if she wanted to work for the Company she would do what she was asked to do, and then she rolled the screens, saying that she would not hurry for Croft. The May 30, 2001 notation, signed by Dykes, indicates that Clayton refused to roll 469 Gold Screens. And the October 11, 2001 notation, signed by Dykes, indicates that Clayton was doing specified things to hold up production.

[10] General Counsel's Exhibit 7. Clayton also wrote that the warning was unjust and she was being disciplined for becoming an officer of the Union. In reply to the grievance dated November 27, 2001 Grady Cutrer wrote that the warning did not indicate that Clayton refused to perform her work; that it was given to her for poor performance; that it had nothing to do with her being an officer of the union; and that it was given for just cause. Page two of General Counsel's Exhibit 7.

Grady Cutrer
Jimmy Dykes
Charles Coleman
Anna Clayton

The written warning was issued for poor job performance. At 8:45 AM Mrs. Clayton had rolled 14 screens and should have rolled considerably more than that.

Coleman testified that at a meeting two or three weeks after Clayton had received this warning MacDougal asked him if Clayton could have rolled more screens in the involved length of time and he said "Yes, if she had all the material there that it took to roll the door, she could have, if she had all the scallops there, she could have rolled more screens than 14 in about an hour and something" (transcript page 324); that MacDougal asked him if he would sign that and he told MacDougal "she could have rolled - - if she had all the material there, she could have rolled more screens than that, but she didn't have the material there" (transcript page 324); that he did not pay attention to how the statement was worded, he just signed it "because we was just talking" (transcript page 324); that later in the evening of that day when he read the statement he realized that MacDougal, who typed the statement, "didn't word it like he was talking. He worded it like all the fault was on her after I read it" (transcript page 325); that he was the material handler on the involved line on November 26, 2001 when Clayton was on the line and he did not have his scallops there at the time; that he knew that he did not have all the material that it took to roll the screens; that Clayton was working on the slowest door to roll; that he was the only person who knew how to roll that door and Clayton was learning how to roll that door; that it is hard to roll the door because the cold temperature affects the rolling, the roller really has to be experienced in rolling because of the scallops and it is a complicated door to roll; that of the 12 different styles of doors that Croft makes this is the hardest one to roll; and that MacDougal gave him a copy of his statement

> and then that evening when I went over my notes, I read the copy he gave me, and I said then, I said, he done already tricked me by me not reading it before I signed. I said, we talked general about this, and I thought he was writing what I said. But when I got this here note and got home and looked at it, I seen it was totally different from what we was talking about. He didn't put down what I said. He put down what he said. [Transcript page 329]

Coleman further testified that he did not bring this to MacDougal's attention the next day because the warning would not be taken back off the record.

Grady Cutrer testified that, as he recalled, he presented General Counsel's Exhibit 25 to Coleman for his signature on November 26, 2001. Unlike Respondent's Exhibits 16 and 20, two other documents Grady Cutrer admittedly authored, the statement itself is not dated. On cross-examination Grady Cutrer, when asked if he typed General Counsel's Exhibit 25 for Coleman, answered "That's my recollection, sir." (transcript page 442) Grady Cutrer further testified that he typed it up after the meeting where Clayton was given the written warning.

Respondent's Exhibit 19 is a memorandum dated November 26. 2001 which was drafted by Grady Cutrer. It summarizes his investigation of Clayton's work on November 26, 2001. It reads as follows:

> This morning I was advised by Jimmy Dykes that Anna Clayton's job performance was not at an acceptable level. She is a door screen roller and had only rolled 14 screens by

> 8:45 AM. By this time of the day, she should have rolled at least 54 to 65 screens into the door frames. [If Clayton had rolled 60 screens during the involved 1 hour and 45 minute period, this would mean that in an 8 hour period she theoretically could roll about 275 of these screens, which are Croft's most difficult screens to roll. It was not demonstrated that Clayton or anyone else ever rolled what the Respondent indicates Clayton should have rolled during the involved period, and Croft's attorney asking Clayton how many of the easier screens she has rolled in a day is nothing more than attempting to compare apples to oranges.]
>
> Jimmy Dykes directed the Lead Person (Charles Coleman) to talk to Anna and advise her that her productivity had to speed up. Coleman then came back to Jimmy and said that Anna told him, she was not going to kill herself.
>
> The decision was then made that we would issue Anna a Written Warning Slip for poor and unacceptable job performance.

On cross-examination Grady Cutrer testified that he observed Clayton working on November 26, 2001 at a slow pace but he did not mention his personal observations in his above-described memorandum which, as noted, begins with "This morning I was advised by Jimmy Dykes that Anna Clayton's job performance was not at an acceptable level."

Dykes testified that doors 464 and 564 are scallop doors; and that the 564 scallop door is harder to run then any other door because it has a fine "T-spun" and only Coleman and Clayton can roll them "good."

On November 27, 2001 Clayton filed a grievance, General Counsel's Exhibit 16, alleging as follows:

> The Company does not apply the rules fairly. Sup. Jimmy Dykes gambles in the plant using the Company time and property, to facilitate gambling. His relative and Company employee take bets for him on Company time in violation of Rule # 6. They started with every football season, college/professional (repeat offense).

In the "Adjustment Desired" section of the grievance form, Clayton wrote "Apply disciplinary action including discharge, unprofessional for a supervisor." Clayton testified that this grievance was not in retaliation for her November 26, 2001 write-up because this grievance and the fact that allegedly Dykes was gambling on the line, using some of the employees, was discussed with Coleman and Grady Cutrer before her November 26, 2001 write-up; that Harrell would take a sheet around, people would give her money and put their name in a square on the sheet[11]; and that on many occasions she saw employees, Dykes, and other supervisors doing this while they were working. In his November 28, 2001 reply to the grievance, page two of General Counsel's Exhibit 16, Gabe Cutrer indicated that the union cannot dictate outside the unit as to what the company does and does not do with regard to discipline, but that the company would investigate the allegations. Gabe Cutrer could not recall whether there was any additional investigation.

In January 2002 Clayton bid on and won a material handler position on Nadine

[11] Donati testified that Respondent's Exhibit 28 is the report of dues deducted and paid to the Carpenters union for the month of November 2001. Mable M. Harrell's name is included on the list of employees from whom dues were deducted in November 2001.

Jackson's line. She was responsible for gathering and bringing the materials to the framers and fabricators on the line. Clayton held the position for 10 days. During that period Clayton also rolled screens, trained new screen rollers, and relieved employees who needed to go to the bathroom.

On January 17, 2002 Clayton filed a grievance on behalf of LaTorria Robinson, General Counsel's Exhibit 17. The grievance alleges the following:

> Plant Rule # 15. He started in July 2001 about having sex, and he continues to harass me now because I refuse. (Supervisor Jimmy Dykes)

In the "Adjustment Desired" section of the grievance form, the following appears: "Stop the harassment, What Federal & State laws require for … [these] actions. Clayton testified that it was her understanding of the plant rules that someone who sexually harasses someone faces immediate discharge. Croft's reply is found in General Counsel's Exhibit 24.

Dykes testified "I never said nothing [sic] in my life to La Torria Robinson about no sex. And then if I did say something to somebody, it sure wouldn't be La Torria Robinson. I can promise you that." (transcript page 481) Dykes testified further that he was asked about the allegation by Croft's management.

Donati testified that he investigated the sexual harassment allegation of Robinson; that the Union agreed to handle the complaint under Croft's sexual harassment policy; that the results of the in-plant investigation were inconclusive; that Robinson agreed to a transfer outside the jurisdiction of Dykes; that Croft received a charge from the EEOC concerning this matter; that there was an EEOC hearing; that Croft was required to revise its posted sexual harassment policy, more prominently post it, and change Robinson's break period so she could take her break at the same time as the employees in the department she previously worked in; that he counseled Dykes about the policy and put a note to that effect in his file; and that he did not find any basis in fact to conclude that Dykes engaged in the alleged sexual harassment.[12]

On January 23, 2002 Clayton filed a grievance on behalf of Brenda Norris, General Counsel's Exhibit 18. The grievance reads as follows:

> Unjust suspension by supervisor Earlisa Matthews [who] has developed production standard that are subject to negotiation and not in contract, impossible to reach these conditions.

In the "Adjustment Desired" section of the form the following appears: "Pay three days lost time wages, remove infraction from the record, and stop Miss Matthews from continually harassing Miss Norris."

On January 24, 2002 Clayton received her second warning, General Counsel's Exhibit 19. The warning reads as follows: "Rule # 1. Employee failed to perform job as directed by her supervisor." Grady Cutrer met with Clayton and Coleman. Cutrer told Clayton that since this was her second suspension, it called for a three-day suspension. Clayton testified that she asked Grady Cutrer why she received the warning when Dykes asked her to take care of her line; that Grady Cutrer told her that Dykes told him that he asked Clayton to roll pink screens up for both

[12] Respondent's Exhibit 30 are the documents, including Donati's notes, relating to this sexual harassment allegation.

lines and both lines had stopped and she was written up because there was no material on either line; that the morning of the day in question Dykes told her to get her material together because he had some screen for her to roll; that she got her materials together, she also had a new screen roller that she was assigned to, and she had a chance to roll a few doors; that at one point when she was getting her material Dykes asked her why Julius Garner's line was down and she told Dykes that she did not know and he needed to talk to Coleman or Garner about it; that Dykes then walked over and talked to MacDougal; that Dykes then came back to her and asked her if she rolled any screens on Garner's line that day; that when she said "No" Dykes asked her if she rolled any screens at all that day and she told him that she rolled screens on the line she was assigned to; that Dykes left and she again saw him talking with MacDougal; that a few minutes later Dykes told her that she needed to go to Grady Cutrer's office; that Grady Cutrer asked her if she rolled screens on Garner's line that day and she told Cutrer that Dykes only instructed her to roll screens for Nadine Jackson's line; that about 10 minutes later Dykes, with Coleman, spoke to her and she asked Dykes why he kept harassing her about Julius Garner's line when he never said anything to her about Julius Garner's line; that Dykes said that she was supposed to roll for both lines in addition to her material handler duties; that Dykes did not tell her to roll for both lines; that Coleman told Grady Cutrer that he was the one over the Julius Garner line[13]; that Grady Cutrer said that Dykes had instructed Clayton to roll for both lines and she was going to be taken off the material handler job; that she wrote on the grievance that Dykes was making false statements about her job performance because the Company needed a screen roller and the Company wanted her back in that job; that Grady Cutrer said that he had to send her home for a three-day suspension; that it was her understanding that once an employee bid on a position, there was a 30 day trial period under the collective bargaining agreement, General Counsel's Exhibit 20; and that Dykes did not tell her that she was responsible for two lines on January 24, 2002. On cross-examination Clayton testified that under the collective bargaining agreement the Company had the right to assign employees to any task in the department that the Company felt was necessary to be assigned to; and that she performed the material handler job as it should have been performed, and she was not aware that she did anything incorrect the 10 days she performed that job.

Regarding Clayton's second warning, Coleman testified that at the meeting when Clayton was given the warning in Grady Cutrer's office, Dykes said the he told Clayton that if she saw the painted line stopping she was supposed to get over there and roll screens; that Clayton was a material handler at the time; that he told MacDougal, Cutrer, and Dykes at this meeting that he had the painted line and that Clayton had the mill line and if the painted line stopped, it was his line; that this is the way it was set up; that if someone was going to be disciplined over the painted line stopping, they should have been talking to him since Clayton had the mill line; that they should have questioned him about why the painted line was stopped since it was his responsibility to keep the painted line going; and that he told the managers present at this meeting that Clayton had a new screen roller on the mill line and he had a new screen roller on the painted line.

With respect to the January 24, 2002 warning to Clayton, Dykes testified on cross-examination that he asked Clayton to roll screen on the mill finish line; that on that particular day one of the lines did not need a screen roller because the full-view doors did not need screening; that when she was material handling Clayton was supplying the mill finish line; that the line that Coleman was the material handler for and Julius Garner was the Lead Person for was the line that did not require a screen roller; that he asked her to roll screens on the other line and

[13] Coleman was a Lead Person and a material handler. Clayton testified that Coleman was a screen roller before he became a Lead Person.

Clayton told him that it was not her job and she was only going to do one job; and that Clayton "finally … rolled some," and "she went and rolled …," and "I don't recall her rolling none [sic]." (all transcript page 498)

On January 28, 2002 Clayton filed a grievance, General Counsel's Exhibit 21, alleging that the Company reprimanded her and the Company did not have just cause for the disciplinary action.[14] The grievance requests that Clayton be made whole by removing he reprimand, the payment of lost wages, and reinstatement to the bid job she was awarded prior to the unjust disciplinary action taken against her.

Upon her return from her three-day suspension Clayton rolled screens on January 29, 2002 on Nadine Jackson's line. At the end of the day the line was down because Dykes told the material handler, John Wittington, to get the wrong material for the line. Clayton testified that she ran out of material to roll, she was waiting for the material to be set up, and during that process the buzzer went off signifying the end of the shift; that no one was working on her line and the whole line was down because they did not have the material; that she stood at her work station waiting for the material; that as far as she knew she was the only one who was disciplined; and that MacDougal and Dykes were there when this occurred. On cross-examination Clayton was asked if she recalled Dykes telling her that she needed to go back to work on January 29, 2002, and Clayton answered "No." She testified on cross that close to the end of the shift the framers did not have any doors for her to roll, she had to stand there until they set the line up for the material, and the buzzer went off before that happened; that Dykes did not speak to her close to the end of the shift; and that at one point Dykes left MacDougal and stood next to her to yell to the people on the other line to put their goggles back on but he did not speak to her between 3 and 3:30 p.m. that day and she was certain of that.

Nettie Johnson, who was an employee of Croft when she testified at the trial in this proceeding, worked as a framer on the same line as Clayton on January 29, 2002 from 7 a.m. to 3:30 p.m. Regarding what happened that day, Johnson testified that about 3:15 p.m. they had finished an order they were on, Dykes told acting material handler Whittington to move the flats out and go and get some reversible bars; that at that time there were no doors up, none were

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[14] The Respondent's replies are attached. In his reply Grady Cutrer indicates that Clayton was told by her supervisor to assist as needed the door screen rolling operation on both 1600 lines; that she did not do as instructed and both lines ran out of door screens; and that regarding the job bid, Clayton, after 10 days, was not performing the job in an acceptable manner and since there were no indications that she would be able to perform the job in a satisfactory manner, she was disqualified and placed back into the job she held before becoming a material handler. Donati echoed these observations in his denial of the grievance. On cross-examination Grady Cutrer testified that to his knowledge Clayton was never given a written warning or an avoid verbal order or even a written suggestion that she was not properly doing her job as a material handler. Grady Cutrer further testified as follows:

> I wouldn't normally have written and AVO to give to the employee because they were not performing their job as expected or if they did something wrong. It more likely would have been in the form of a warning. An AVO would have been my commentary or my recollection of notes regarding the meeting with her or the circumstances around the meeting. [Transcript page 447]

Dykes testified that the lines that Clayton was responsible for supplying with materials went down because she was not doing her job, and when he spoke to her about it she would tell him that he would have the materials when she got them up there; and that he did not give Clayton an AVO for her shortcomings as a material handler.

framed, there was no frame material on the table, and there were no doors on the wall; that "[w]e didn't have any doors framed where she [Clayton] could roll them. If we didn't work, that means … [Clayton] didn't have anything to do" (transcript page 279); that Whittington brought reversible bars and we framed two of these doors; that she then saw that the bars were the wrong bars and she told Dykes that he told Whittington to bring the wrong bars; that she told Clayton not to roll those doors, set them to the back, they are the wrong doors; that Dykes was standing right there and he told Whittington to take out the wrong bars and get the right bars; that by this time "it was 3:25 p.m., and we still hadn't done anything, because we didn't have material, so after we got the bars, we still had to get the seals and the heads to frame the door, and they hadn't put that out before 3:30. So we stood there …." (transcript page 280); that the whole line stood there, the line was down "[n]obody had … work. We have to give them the work. It had to come from us. We didn't have anything to give them. They couldn't run a door unless we framed" (transcript page 281); that the line was down from approximately 3:15 p.m. until 3:30 p.m. and no one on the line was working; that Dykes told some of the employees put on their safety glasses but he did not tell that to Clayton; that she was not written up that day for not working; and that no one other than Clayton was written up that day for not working. On cross-examination Johnson testified that at the time this happened she was Secretary-Treasurer of the involved Carpenters' Local; that MacDougal is not a very fair man and he did not treat everyone equally; that MacDougal was mean; that she had two instances with MacDougal where he lied; that one involved MacDougal saying that she drank a soda while she was walking down an aisle in the plant when she did not; that she asked Coleman and Chris Jarrel for a grievance to be filed but it was not written up; that the other instance involved a situation when she had to recut some vinyl; that Grady Cutrer told her that MacDougal told him to write her up over this; that she was not at fault because the seals that were being used were cut short and this affected the angle; that on another occasion MacDougal said that she left the department she was working in that day to return to her own department before 3:25 and, after she had stopped in front of MacDougal on the day in question and looked at her watch which indicated that it was 3:29 p.m. at the time - and the buzzer rang before she even got back to her department, called him a liar to his face, after he put his finger up in her face and asked her "[w]ho are you to call me a liar"; that she was suspended for three days; that she filed a grievance against MacDougal; that she filed an unfair labor practice charge over the incident; that the charge was not dismissed; and that she had not received anything indicating that the charge had been denied or revoked. The parties stipulated that the charge was dismissed by the involved Region and the appeal was denied on May 24, 2002.

Nadine Jackson, who was an employee of Croft when she testified at the trial in this proceeding, was the Lead Person on the line that Clayton worked on January 29, 2002. Regarding what occurred on January 29, 2002, Jackson testified that around 3 p.m. the line came to a complete stop because they ran out of doors since Dykes set the line up wrong; that the line stopped after Nettie Johnson told her that the wrong door frame jambs were supplied; that the line came to a complete stop and everybody was standing there; that no one but Clayton was written up for not working that day; that everybody, 12 people, on the line stopped working[15]; that Clayton did not work on the end of the line but rather she was located after the two framers; that there were about eight employees on the line after Clayton; and that someone looking at Clayton on the line would see the other employees on the line standing still at the same time. On cross-examination Jackson testified that she was a member of the Union on January 29, 2002; that her Lead Person job was taken away after Clayton was fired; that a grievance was supposed to have been filed regarding the loss of her lead position job; that at

[15] The Lead Person, two framers, one screen roller, one back bedder, four glaziers, two Z-bar workers, and a head capper.

the time of the trial herein she was an auto fab operator; and that Nettie Johnson worked on her line on January 29, 2002. Before Clayton was terminated, no one from management asked Nadine Jackson what happened on the line that day.

MacDougal testified that he observed the line that Clayton worked on January 29, 2002 from 3:15 p.m. to 3:30 p.m.; that when he first observed that line it was moving fairly well, everyone seemed to be working at a reasonable pace, and everybody had material to work with; that at about 3:25 p.m., before the buzzer sounded Clayton stopped working, took off her glasses, put them on the table, folded her arms, and looked directly at him; that he told Dykes to tell Clayton to go back to work because there were 5 minutes left in the shift, Clayton had three doors standing behind her that needed to be rolled, and the two framers were still framing; that he saw Dykes talk to Clayton but he could not hear what was said; that Clayton did not go back to work; that he saw Nettie Johnson framing and she never stopped working during that period of time; that there were doors on the line which had been rolled and so the employees further down the line from Clayton had work for the last five minutes of the shift ["it probably took the last five minutes for them to finish up what was on the line" (transcript page 360)] but the line was left empty for the next day; that the testimony of Jackson, Johnson, Clayton and Coleman that the line was down at that time and no one was working was absolutely untrue; that he saw with his own eyes that everyone on that line was working right up until the buzzer sounded, with the exception of Clayton; and that he requested Grady Cutrer to write up Clayton. On cross-examination MacDougal testified that he did not know either what Dykes said to Clayton or Clayton said to Dykes, and he did not speak with Dykes to find out what was said before he decided to give Clayton a write-up. Also MacDougal testified that from where he was standing he could see the whole line that Clayton was working on. On redirect when asked "did you ever see Nadine Jackson … or any other person on that line stop work, ford their arms, and refuse to continue to do work when there was work to be done" MacDougal answered "No. That never happened to my knowledge before." (transcript page 388)

Dykes testified that on January 29, 2002 he came back to his department about 3:20 p.m. to find line 1600 down; that he saw MacDougal standing by line 1600 and he saw that Clayton was not rolling screens; that "[r]ight at that point, there wasn't no [sic] frames there. But they did get started framing …." (transcript page 463); that MacDougal told him to tell Clayton to start rolling and get the line going; that he told Clayton to start back rolling the screens; that they had started back framing and they had set doors up for her to roll; that everybody was just standing, the whole line was down; that when he asked Clayton to start back to work she said "What's the old gray-headed goat staring at me for" (transcript page 463)[16]; that Clayton would not start back to work she just stood there and looked at MacDougal; that at one point the framers were out of material but the material handler brought the material and they started back framing but Clayton would not roll the screens; that he was certain that there were frames available for Clayton to roll; that Clayton stopped working at 3:20 p.m.; that it is true that there were not the proper materials on that line for them to run and it was his fault; that the framers were out of material and at one point and they were not framing; that when the framers started framing Clayton would not roll the screens; and that after he spoke with Clayton he went back to MacDougal and said "Well Mr. John [MacDougal], I told her [Clayton] to go back to work, and I said, You see yourself she won't start back" (transcript page 469). On cross-examination Dykes testified that when he told Clayton to start back working she said "I ain't worried about that old

[16] Dykes also testified that the one person in the plant who he has heard calling MacDougal a "white devil" (transcript page 490) was Clayton. On cross-examination Dykes testified that he never heard Clayton refer to MacDougal as a white devil but she did refer to him as a "old white headed goat." (transcript page 501)

white-headed goat there" (transcript page 506); that while MacDougal was looking at her, she then picked up a frame and put it on the table but Clayton did not roll it; that he told MacDougal that he told Clayton to start working; and that MacDougal just shook his head and told him that he was going to have to speak to Grady Cutrer. On redirect Dykes testified that in January 29, 2002 after speaking with MacDougal he went over to the line near Clayton and hollered at the employees to put their safety glasses on. Subsequently Dykes testified that when the line first got started back up there were no frames to be rolled but then the framers had one door framed; that while Clayton took it up on the rolling table, she did not roll the screen into it; and that at 3:30 p.m. when the buzzer went off there were less than five doors framed and ready to be rolled.

On January 30, 2002 Clayton, who had worked for Croft for 24 years, was terminated. Clayton testified that when she reported to work on the morning of January 30, 2002, she and Coleman were told to report to Grady Cutrer's office; that Grady Cutrer told her that she was observed by two officials the day before standing idle, he would have to write her up, this was her third warning in a nine month period, and he would have to terminate her; and that when she told him that the material was not there for her to roll, Grady Cutrer said that "there wasn't anything that he could do about it, that he regretted that this had to happen, and that … [she] could use his name for a reference" (transcript page 223). The Warning, General Counsel's Exhibit 22 states: "Rule # 18 – on 1/29/02, Anna stopped work before regular scheduled time without supervisory permission." Clayton wrote the following on the warning: "I have been harassed. Every one had stopped work, and not one, but all, the whole department …."

On January 30, 2002 Coleman met with Grady Cutrer before Clayton was terminated. Coleman testified that Grady Cutrer said that Clayton stopped work before 3:30 p.m.; that he told Grady Cutrer that everybody stopped working at 3:25 because Dykes, whom he overheard, told Wittington, who was new to the job, to go back and get the wrong bars; that he saw that Clayton did not have anything to do, Wittington brought the wrong bars, and they were all standing waiting; that the whole line was standing; that Grady Cutrer told him that "it was out of … [his] hands" (transcript page 312); that they had the warning written on the table and Clayton asked him if he was going to say anything and he told Clayton to sign the warning; that after MacDougal, Dykes, and Clayton left the meeting and he and Grady Cutrer were the only ones in the room he said "We done gone too far now, she ain't got no bars, man. And he said, Well Charles, it's out of my hands." (transcript page 312); that he told Grady Cutrer "we done gone too far now. John brought the wrong bar, and that was really - - Anna [Clayton] could argue that was the reason she wasn't rolling screen, because the framers didn't have any frames up there, because they had the wrong bar" (transcript page 314); and that after he kept telling Grady Cutrer this, Grady Cutrer said "Well Charles it's out of my hands." (transcript page 314)

Dykes testified that on the morning of January 30, 2002 MacDougal told him to get with Grady Cutrer because they were probably going to have to write-up Clayton; that he told Grady Cutrer that Clayton refused to start back rolling her screens; and that he did not recall whether he told Grady Cutter that he personally told Clayton that she should go back to work.

Grady Cutrer testified that he made the decision to terminate Clayton since she had two prior warnings in a nine-month period.

On February 1, 2002 Clayton filed a grievance, General Counsel's Exhibit 23, alleging that the discharge was unjust, it violated the collective bargaining agreement, and the Company did not have just cause for the disciplinary action. Grady Cutrer's reply is attached. As here pertinent, he indicates that "On the afternoon of January 29th, Ms. Clayton stopped her work and stood idle from 3:25 PM until 3:30 PM, which is the end of her shift." Grady Cutrer testified

that he investigated the grievance in that he spoke with Dykes and MacDougal before he responded to the grievance. On cross-examination Grady Cutrer testified that MacDougal and Dykes told him that Clayton stopped work before the end of the shift; that he did not recall if Dykes said that he spoke with Clayton that day; that MacDougal told him that he observed Clayton taking her safety glasses off, standing there with her arms folded, looking at him, and shrugging her shoulders; that he believed that MacDougal told him that he told Dykes to speak to Clayton but he was not sure; and that if Dykes told him that he told Clayton to return to work and she did not that would have been important to him. Subsequently Grady Cutrer testified that while he interviewed an employee who was on the floor with respect to the Dawson termination, he did not speak to any employees on the line Clayton worked on January 29, 2002 with respect to what occurred because "I had the supervisor and Mr. MacDougal indicating that they observed her stopping work early and that's the basis of my decision there." (transcript page 458) As noted above, according to Grady Cutrer's own testimony, Dawson was terminated by Grady Cutrer for the following reason:

> I then told her, I said, Ora Mae, I said, your refusal to do as you're asked to do can lead you to a termination. And she said, Well, she said, that's not my job; I've got my own work to do. I said, Ora Mae, you must do what you've been asked to do, and if you don't do it, then I'm going to consider that insubordination, and I'll terminate you. And her reply to me was, You do whatever you think you've got to do; I'm not doing it; that's not my job. And at that point, I terminated her.

On the one hand, notwithstanding the fact that, according to his testimony, he personally fired Dawson for refusing to comply with his direct order, being insubordinate to him, Grady Cutrer still felt that it was necessary to interview and get a statement from an employee who was on the floor with Dawson at the time. On the other hand, as noted above, Grady Cutrer did not believe that it was necessary to speak with any of the employees who worked with Clayton on January 29, 2002. Grady Cutrer did not deny telling Coleman, with respect to the Clayton termination, "it's out of my hands."

Respondent's Exhibit 24 are over 80 disciplinary warnings which the Respondent indicates were introduced as examples of warnings to other employees for the same or similar reasons as those that were given for the discipline of the Charging Parties. Respondent's Exhibit 31 are the documents regarding the discharge (and subsequent reinstatement) of an employee for walking off her job without permission prior to the scheduled quitting time. Respondent's 34 is (1) a warning to an employee for being argumentative, vulgar, and belligerent to a supervisor, and (2) the grievance that was filed with respect to the warning. Donati testified that at the time of the trial herein that employee was a supervisor. According to the Respondent, this shows that Croft does not discriminate against employees for their union activity. Respondent's Exhibit 36 are two disciplinary warnings to an employee for sawing the wrong lengths. Respondent's Exhibit 37 are disciplinary warnings and records of conversations regarding problems with an employee. Respondent's Exhibit 38 are disciplinary warnings to an employee. And Respondent's Exhibit 39 are the absentee records and a disciplinary warning to an employee.

As noted above, by my order dated March 13, 2003 General Counsel's Exhibit 28 and Respondent's Exhibits 29, 35, 40 and 41 were received in evidence. General Counsel's Exhibit 28 are a number of AVOs, disciplinary warnings, and personnel file memoranda. Respondent's Exhibit 29 is a list of all employees who were terminated for violating plant rules, other than attendance, for 2000, 2001, and 2002. Respondent's Exhibit 35 are warnings and notes to file for employee Angela Davis. Respondent's Exhibit 40 consists of a 1987 letter from the Regional Director of Region 15 refusing to issue a complaint in Case No. 15-CA-10209, a notice requiring

employees to sign disciplinary warnings, an employee status change, an AVO, and a number of disciplinary warnings. And Respondent's Exhibit 41 consists of (1)(a) three charges alleging that the Carpenters collectively failed/and or refused to file or process grievances[17] and (b) two refusals to issue complaints and one dismissal of the charge by the NLRB, (2) a petition to decertify the Carpenters filed by Clayton on March 4, 2002 and the withdrawal of the petition after the Carpenters, by letter dated March 29, 2002, disclaimed interest in the further representation of the involved employees, (3) the petition filed in 15-RC-8393 by the Boilermakers on April 5, 2002, (4) a withdrawn charge in 15-CA-16471, and (5) the charge filed by Nettie Johnson March 6, 2002 in 15-CA-16492 alleging, among other things, that she was suspended for three days in retaliation for her union activity, the NLRB dismissal of that charge, and the denial of the appeal.

Donati testified that the plant has about 80 percent turnover annually and that employees are trained on the job.

Analysis

Paragraph 7 of the complaint alleges that about February 5, 2002 the Respondent through Dykes, at its facility threatened employees with termination because of their activities on behalf of the Carpenters Union and Charging Party Boilermakers. General Counsel on brief contends that when Dykes told Dawson that they were going to fire her because she had been fooling around with the union he was referring to the charge Dawson filed against Croft and the grievance Dawson filed against Donati's questioning of her about the charge; that it is clearly chilling to employees' Section 7 rights to inform them that they would be fired because they engaged in union activity; and that Dykes' comment should be found to violate Section 8(a)(1) of the Act. The Respondent on brief argues that Dykes credibly denied Dawson's fabricated allegation.

Dykes is not a credible witness. He fabricated testimony regarding speaking to Clayton on January 29, 2002, falsely testifying that he told Clayton to go back to work and falsely testifying that Clayton refused. Dykes also fabricated testimony about telling MacDougal on January 29, 2002 that he spoke to Clayton and she refused to go back to work. MacDougal contradicted Dykes in that MacDougal testified that he did not know what Dykes said to Clayton or what Clayton said to Dykes, and he did not speak with Dykes to find out what was said before he decided to give Clayton a write-up. It is one thing to make a mistake or to err while testifying. It is quite something else to fabricate testimony. Dykes demonstrated that he was willing to intentionally lie while under oath. Dawson's testimony regarding what Dykes said to her is credited. Dykes told Dawson "… if I have to take you to the office, they're going to fire you because you've been fooling around with that union." As noted above, Dawson had filed a charge with the NLRB against Croft, alleging, among other things, that her union refused to represent her, and she filed a grievance, through Clayton and the union, against Donati after he called her into a meeting with him, did not explain to her what her rights were, refused her request to have Clayton present, and accused her of lying about the union and the company. Five days after Region 15 of the NLRB issued a letter advising that Dawson's charge was filed too late, and she could file a separate charge against the union regarding her allegation that it

[17] Two of the charges were filed after, as noted below, the Carpenters disclaimed interest in representing the involved employees, and the refusal of the involved Region of the NLRB to issue a complaint regarding the third charge was based on insufficient evidence of a violation and the fact that the Carpenters acted in good faith.

refused to represent her, Dawson was told, without justification according to Dawson,[18] that she would be discharged if she refused again in the future to do whatever she was assigned to do by her supervisor. Thirteen days later Dawson, who had worked for Croft for 21 years, was terminated. On February 5, 2002, Dykes threatened Dawson with termination in violation of Section 8(a)(1) of the Act.

Paragraph 8 of the complaint alleges that about February 5, 2002, the Respondent terminated its employee Ora Mae Dawson in violation of Section 8(a)(1) and (3) of the Act. General Counsel on brief contends that the evidence clearly shows that Dawson engaged in protected conduct by filing a charge against the Respondent and then filing a grievance against Donati after he questioned her about the charge; that Respondent's knowledge and animus is demonstrated by its violations of Section 8(a)(1) of the Act when Grady Cutrer and Donati unlawfully questioned Dawson about the charge; and that the Respondent has not shown that Dawson would have been terminated notwithstanding her protected conduct in that (a) Deer testified that she did not hear Dawson refuse to work, (b) Dawson's doctor's note indicated that she was not to lift more than fifteen (15) pounds, and (c) Cutrer's claim that Dawson refused his direction to do what she was asked to do, frame, is not credible since Grady Cutrer is not a reliable witness in that he attempted to hide his knowledge of Dawson's NLRB charge and Grady Cutrer attempted to mislead about what happened between Dawson and Donati on December 12, 2001, when Donati testified that Cutrer was not even there. The Respondent on brief argues that General Counsel presented no evidence of union animus and he has not established a prima facie case of a violation; that the Respondent enjoyed a peaceful 25 year relationship with the Carpenters, and prior to these charges, no NLRB complaint had issued during the extended contract period with the Carpenters; that assuming arguendo that Counsel for General Counsel did meet his burden of presenting a prima facie case, the Respondent proved that the discharge would have occurred for legitimate reasons anyway; that Dawson was discharged for insubordination in the meeting with Grady Cutrer on February 5, 2002; that insubordination is an immediate discharge offense under the plant rules; and that the events of February 5, 2002 could have resulted in Dawson's third warning within a nine-month period which would have resulted in discharge.

As set forth by the NLRB in *Fluor Daniel, Inc.*, 304 NLRB 970 (1991):

> In *Wright Line,* 251 NLRB 1083 (1980), enfd. 662 F. 2d 899 (1st Cir. 1981), cert denied 455 U.S. 989 (1982) the Board set forth its causation test for cases alleging violations of the Act turning on employer motivation. First the General Counsel must make a prima facie showing sufficient to support the inference that protected conduct was a 'motivating factor' in the employer's decision. Once accomplished, the burden then shifts to the employer to demonstrate that the same action would have taken place notwithstanding the protected conduct. It is also well settled, however, that when a respondent's stated motives for its actions are found to be false, the circumstances may warrant an inference that the true motive is an unlawful one that the Respondent desires to conceal. The motive may be inferred from the total circumstances proved. Under certain circumstances the Board will infer animus in the absence of direct evidence. That finding may be inferred from the record as a whole. [Footnotes omitted.]

[18] Deer did not testify about Dawson placing labels on windows. Neither Dykes nor MacDougal, who fabricated testimony about Clayton's discharge as described below, are credible witnesses. Consequently, Dawson's testimony about the labels is not contradicted by a credible witness. Dawson's testimony is credited.

In order to establish a prima facie violation of Section 8(a)(1) and (3) of the Act, the General Counsel must establish union or concerted protected activity, employer knowledge, animus and adverse action taken against those involved or suspected of involvement which has the effect of encouraging or discouraging union or protected activity. Inferences of animus and discriminatory motivation may be warranted under all the circumstances of a case, even without direct evidence. Evidence of false reasons given in defense may support such inferences.

General Counsel has demonstrated that Dawson engaged in union and/or protected activity in that Dawson filed a charge against Croft and she filed a grievance with respect to Donati's conduct on December 12, 2001. It has been demonstrated that Croft knew about Dawson's union and/or protected activity when she was terminated, there was antiunion animus on the part of Croft both in its treatment of Dawson and Clayton, and taking adverse action against Dawson had the effect of discouraging union activity. General Counsel has made a prima facie showing sufficient to support the inference that protected conduct was a motivating factor in the Respondent's decision.

Croft has not demonstrated that the same action would have taken place notwithstanding Dawson's protected conduct. Donati was really bothered by Dawson's charge. He took the unusual action of coming to the plant to meet with her and telling her to her face that she was a liar. Obviously he must have been all the more bothered when she filed a grievance over his conduct during his meeting with her. The Respondent's stated reason for Dawson's termination is pretextual. Grady Cutrer is not a credible witness. While testifying about the meeting between Donati and Dawson on December 12, 2001 Grady Cutrer tried to create the impression that he was present whereas according to the credible testimony of Dawson he was not present when Donati spoke with her. Donati testified that when he spoke with Dawson, Grady Cutrer was not around. Also Donati contradicts Grady Cutrer's testimony that he did not know about Dawson's charge before he terminated her. Dawson's testimony is credited. Grady Cutrer actually discussed the charge with her before Donati spoke with her about the charge. Also Grady Cutrer gave fabricated testimony about what he said to Dawson on February 5, 2002, and his memorandum regarding what was said is a fabrication. According to his own testimony, Grady Cutrer sat in on a meeting on January 23, 2002 with MacDougal and Dawson, during which MacDougal told Dawson that if she refused to do as instructed again, it would be insubordination and she would be terminated. According to his own testimony, Grady Cutrer authored Respondent's Exhibit 2, which is an AVO indicating that MacDougal told Dawson that the next time she refused to do as instructed that it would be viewed as insubordination and she would be terminated. Grady Cutrer testified that on February 5, 2002 Dawson refused to do what he instructed and he terminated her. Yet according to his own testimony Grady Cutrer then decided to "investigate to find out as best as I can the truth of what happened, and I always try to find if there's any witnesses to the incident … and that's how I identified Ms. Williams." Grady Cutrer testified that he did not believe that Dawson ever started framing. As Croft's own attorney asked, why under the circumstances described by Grady Cutrer would an investigation even be necessary. There was no real investigation. Dawson's testimony about what occurred is credited. While Deer did testify about what Dawson said when she asked her to continue framing for the rest of the day, Deer did not specifically deny that Dawson told her that the framing hurt her arm.[19] Dykes is not a credible witness so his denial that Dawson told him that her arm hurt when she was framing on February 5, 2002 is not credited. Dawson did not refuse to frame on February 5, 2002. Deer admits that Dawson did not refuse while she was talking with her. Deer testified that she could not recall whether she spoke with Dawson during the

[19] Archa Williams, in effect, testified that she was not there for the entire conversation between Deer and Dawson.

remainder of February 5, 2002. Consequently, Deer does not deny Dawson's specific testimony that at some point in the day she took Dawson from framing to the screen table, and she was the one who later told Dawson to bring her purse and come to Grady Cutrer's office. The Respondent has not shown that it had a business justification for terminating Dawson. The Respondent has not demonstrated that the same action would have taken place notwithstanding the protected conduct. The Respondent violated Section 8(a)(1) and (3) of the Act when it terminated Dawson.

Paragraph 9 of the complaint alleges that about November 2001, the Respondent issued a negative performance evaluation to its employee Anna Clayton in violation of Section 8(a)(1) and (3) of the Act. General Counsel on brief contends that it is apparent that the adverse personnel action of giving Clayton a less than stellar evaluation was due to her protected activity, and this type of retaliation is a violation of Section 8(a)(3) of the Act. The Respondent on brief argues that as demonstrated in Respondent's Exhibit 23, Clayton received similar negative evaluations in the past.

Contrary to Respondent's assertions on brief, Respondent's Exhibit 23 does not demonstrate that Clayton received a similar "Reluctant to cooperate and difficult to work with" in the past. Respondent's Exhibit 23 are 1992 and 1993 evaluations. Apparently for the Respondent to go back that far means that the intervening evaluations did not serve the Respondent's purposes. But then neither do the evaluations in Respondent's Exhibit 23 in that "Reluctant to cooperate and difficult to work with" was not checked off on the 1992 and 1993 evaluations. Since the Respondent did not produce any evaluation where "Reluctant to cooperate and difficult to work with" was checked off, it appears that the November 2001 evaluation was the first time in the approximately 23 years that Clayton worked for Croft that "Reluctant to cooperate and difficult to work with" was checked off. For the reasons described below, MacDougal was not a credible witness. Clayton's testimony that in June or July 2001 he told her that she was a troublemaker and he could make things hard for her is credited. As noted above, Clayton became Vice President of the Carpenter's local in August 2001. In her May 2001 evaluation, General Counsel's Exhibit 14, the box for "Cooperates willingly and fits easily into the group" was checked off. Six months later in her November 2001 evaluation, General Counsel's Exhibit 15 - after MacDougal told her that she was a troublemaker and he could make things hard for her - Clayton dropped down two categories to "Reluctant to cooperate and difficult to work with." MacDougal, through Dykes, was fulfilling his promise. Clayton engaged in concerted protected activity, the Respondent knew about it, the Respondent demonstrated its antiunion animus in its treatment of Dawson and Clayton, and an adverse action was taken against Clayton which would have the effect of discouraging concerted protected activity. The Respondent did not demonstrate that the same action would have taken place against Clayton, an employee of Croft for 23 years, notwithstanding the protected conduct. The Respondent violated the Act as alleged in paragraph 9 of the complaint.

Paragraph 10 of the complaint alleges that since November 2001, the Respondent scrutinized its employee Anna Clayton more closely in the performance of her job in violation of Section 8(a)(1) and (3) of the Act. General Counsel on brief contends that after the June or July 2001 meeting with Clayton, MacDougal spent more time looking at Clayton while she worked on the assembly line of Lead Person Jackson; that MacDougal assertedly did this because Jackson's line was at the very bottom of the efficiency rating; that the Respondent allegedly determined efficiency ratings by reviewing the efficiency reports it produced, none of which were introduced in this proceeding; that the Respondent's unsupported assertion for its closer scrutiny of the line on which Clayton worked should not be credited; that it was not shown that

Jackson, like other Lead Persons whose lines were inefficient and/or unproductive, received any verbal counseling and/or discipline for any alleged inefficiency[20]; and that the defense that Jackson's line was inefficient is not supported by any facts and is purely self-serving. The Respondent on brief argues that MacDougal testified that he was in Clayton's department because there were productivity problems, not to single her out.

For the reasons specified above, the General Counsel has made a prima facie case. In attempting to demonstrate that it would have taken the same action, scrutinizing Clayton more closely - notwithstanding her protected conduct - the Respondent relies solely on the testimony of MacDougal. Assertedly the Respondent had efficiency records. Yet it never produced them in this proceeding. MacDougal is not a credible witness. As here pertinent, he testified as follows on cross examination:

> Q. Ms. Clayton said that you spent a lot of your time observing her and watching her, looking to catch her doing something wrong.
> A. I spent a lot of time looking at her line, not particularly looking at her. If she did something like - - you know, if she would do something, like she did on her final day when - - that we've just discussed, that would have caught my attention, but as far as looking especially at her, no.
> Q. Why would you be looking at her line a lot of times, the line that she was working on?
> A. It was the line that needed more improvement than most because of the lack of productivity on that line. It required constant observation to try to correct some of the things that were wrong on that line.
> Q. Relative to other lines in the plant, what was your perception of the efficiency of that particular line?
> A. I believe that at that point in time, it was on the very bottom of the efficiency rating. [Transcript page 363] [Emphasis added]
> ….
> Q. And you testified earlier that on Anna Clayton's last write-up, you were observing her line.
> A. Uh-huh.
> Q. And at that time, you were observing that line because that line was still inefficient. Correct?
> A. It was not as efficient as it should be.
> Q. But it was still an inefficient line.
> A. It was inefficient to a point to where it required my attention. Yes.
> Q. And it was the least efficient line in that plant.
> A. At that particular point in time, I believe it was.
> Q. And when you arrived [to run the plant] it was the least efficient line in the plant. Correct?
> A. Yes. That's correct.
> Q. And Nadine Jackson was the lead person of that line. Correct? ….
> ….
> A. Yes. [Transcript page 371] [Emphasis added]
> ….
> Q. Are they [lead persons] responsible for making sure the product on the line move and ensuring that the product is produced, that the people are working, and that the line is

[20] General Counsel points out that Lead Persons Winda Jean Lenard (Respondent's Exhibit 24), Angela Downs [General Counsel's Exhibit 28(16a, b, and c)] were disciplined with respect to production on their lines. The warnings to Downs are also found in Respondent's Exhibit 24.

moving?
A. Yes.
Q. From June of 2001 to January 2002, if you recall, how many times have you guys given Nadine Jackson a verbal order or a written discipline or any type of written orders regarding the efficiency of her line? [Transcript page 372]
….
A. I have no knowledge of any warning being given Nadine Jackson. [Transcript page 373]
….
Q. And you had the worst efficient line in the plant - - correct? - - was that line.
A. I recall that's the worst line - - the performance of the line was worse than any other in the plant.
Q. As a matter of fact, sir, it was so worse, it required your increased attention during the workday to observe that line. Correct?
A. I spent a lot of time observing that line. Yes.
Q. Do you recall any writings to any of those individuals on that line, Nadine Jackson regarding the efficiency of that line? [Transcript page 374] [Emphasis added]
….
A. I do not recall any written communication by management to Nadine Jackson.
….
A. I'm not saying that there were not any. I just am not aware of any.
Q. Do you recall any written communication between yourself, Mr. Donati, Mr. Dykes, Mr. Cutrer regarding the efficiency of that particular line?
A. No. I can't cite any written communication that I can refer you to. We had constant daily meetings on the subject, but I don't know of any written communication that I can cite you.
Q. In any of those meetings did it ever come up replacing Nadine Jackson during that period, because she was the lead person or getting someone else on that line to help increase that efficiency?
A. Are you asking me, do I know why Nadine Jackson was removed as lead person from that line?
Q. No. I'm not asking you why Nadine Jackson was removed.
A. Well, then I don't know how to answer you.
Q. Well, sir, I'm saying, it appears for at least six months or a year or longer, she was on that line as the lead person, and your saying that's the worst line in the plant.
A. There were two lines, sometimes three. She was not the only one in that department. We're speaking of bad efficiency having to do with the entire department, not particular Nadine Jackson's line.
Q. So it's not the worst line in the plant then. At first I thought you said that was the worst - -
A. Department, not line. We sometimes refer to departments as lines, but there were three - - there were two and sometimes three lines within that department.
Q. What about those other lines? Were any of those individuals written up or - -
A. There were not separate and distinct records by individual lines within the department. I can't tell you whether Nadine Jackson's line was any more inefficient than the other - - some of the other two lines, depending on how many we were running at a given time. [Transcript pages 375 and 376] [Emphasis added]

As can be seen, as General Counsel McClue pressed MacDougal on cross-examination and MacDougal realized what was happening, MacDougal changed his testimony. The Respondent never explained why, if it disciplines other Lead Persons for the poor production of their lines, it never disciplined Jackson for the alleged poor production of her line during the involved period,

namely September to December 2001, when allegedly her line was inefficient and that was the reason he was watching it.[21] The Respondent has not met its burden of showing that it would have taken the same action notwithstanding Clayton's protected conduct. From September 2001 the Respondent violated the Act as alleged in paragraph 10 of the complaint.

Paragraph 11 of the complaint alleges that since about November 27, 2001, the Respondent imposed more onerous working conditions on its employee Anna Clayton in violation of Section 8(a)(1) and (3) of the Act. General Counsel on brief contends that from September to December 2001 Clayton was responsible for not only rolling the screens on Jackson's line but she was also given the added responsibility of rolling the screens on Garner's line; that normally there was a separate screen roller assigned to each line; and that this added work pressure was part of the Respondent's plan to fulfill MacDougal's promise to make it hard on Clayton.

For the reasons specified above, the General Counsel has made a prima facie case. The Respondent does not refute or explain this allegation with either testimony or documentary evidence. The Respondent has not met its burden of showing that it would have taken the same action notwithstanding Clayton's protected conduct. From September to December 2001 the Respondent violated the Act as alleged in paragraph 11 of the complaint.

Paragraph 12 of the complaint alleges that about November 27, 2001 (first written warning), January 24, 2002 (second written warning), and January 30, 2002 (third written warning), the Respondent issued warnings to its employee Anna Clayton. Paragraph 13 of the complaint alleges that on January 24, 2002, the Respondent issued its employee Anna Clayton a three-day suspension. Paragraph 14 of the complaint alleges that on or about January 24, 2002, the Respondent removed Anna Clayton from her desired position as a material handler. And Paragraph 15 of the complaint alleges that on January 30, 2002, the Respondent terminated its employee Anna Clayton. The Respondent's conduct described in paragraphs 12, 13, 14, and 15 allegedly violates Section 8(a)(1) and (3) of the Act.

General Counsel on brief, with respect to the first written warning, contends that the Respondent has no written guidelines for production levels on Garner's line and the Respondent did not offer any evidence as to how it arrived at a figure of approximately 60 doors in one hour and 45 minutes; that the Respondent did not take into account the lack of materials; and that the warning was concocted in an attempt to silence the troublemaker Clayton and punish her for her constant complaining about the unfair treatment at the Respondent's facility. With respect to receiving the second written warning, being removed from the material handler's position, and being suspended for three days, General Counsel on brief contends that this occurred one day after Clayton filed a grievance on behalf of an employee alleging that Croft failed to bargain regarding production standards and approximately six days after Clayton filed a sexual harassment grievance on behalf of an employee; that while the Respondent asserted in its response to Clayton's grievance that Clayton's refusal to roll screen for two lines as directed resulted in lines running out of doors, Dykes testified that Clayton was only needed to roll screen on one line and the other line to which she was assigned did not need a screen roller; that the Respondent's stated motives for the second warning are pretextual; that an inference that the true motive is an unlawful one may be warranted; that the true motive was to retaliate against Clayton for her grievance filing activity; and that the Respondent's position that Clayton

[21] As noted above, Jackson was removed from her Lead Person position. But this did not occur between September and December 2001. Rather it occurred after Clayton was terminated. The reason for this removal was not made a matter of record.

was not performing the material handler job is not supported by any evidence. With respect to the third written warning and Clayton's termination, General Counsel, on brief, contends that while MacDougal testified that the line was not down at any time and that Clayton was the only employee not working, Dykes confirmed that the line was down for a period and that during that period none of the employees were working; and that the Respondent has not met its burden of showing that notwithstanding Clayton's union activity she would have received her third warning and been discharged.

The Respondent on brief argues that for purposes of a mixed motive defense, Clayton's misconduct led to her termination, she was insubordinate her last day worked, and she received three written warnings within a nine-month period; that with respect to the first written warning at no time did Clayton claim her lack of performance was due to any factor beyond her control; that regarding the second written warning, Clayton was instructed to assist as needed on the door screen operation on two lines and help out if they got behind, she did not do as instructed, both lines ran out of door screens, and the two lines were shut down; that Dykes credible testified with respect to the reason for Clayton's second written warning and the removal of Clayton from the material handler's position; that regarding he third written warning and termination, "[t]he line had stopped about 3:20 p.m.. R. 462. Mr. MacDougal was in the area at the time. R. 463. The line had stopped because they had run out of the proper material …." (Respondent's brief, page 18), "the employees down the line from her were not able to work because Ms. Clayton would not roll the screens in the available frames. (R. 360)" (Respondent's brief, page 18), and [b]ecause Mrs. Clayton did not roll the screens, employees down the line from her ran out of product to work on before the end of the shift" (Respondent's brief, page 19); and that there was no unlawful motivation for the discharge of Clayton.

General Counsel has demonstrated that Clayton engaged in union and concerted protected activity, the Respondent knew about her activities, there was animus on the part of the Respondent as demonstrated by the unlawful treatment of Clayton and Dawson, and there were adverse actions taken against Clayton which had the effect of discouraging union or concerted protected activity. In situations such as the one at hand, inferences of animus can also be drawn since the Respondent gave false reasons for taking the actions it took against Clayton. Taking Clayton's termination first, it is my opinion that MacDougal is not a credible witness. He lied under oath regarding material facts. With the material quoted above from his brief, the attorney for Croft adds himself to the list, which also includes Dykes, of those who contradict the testimony of MacDougal regarding what occurred on January 29, 2002. The Lead Person on Clayton's line on January 29, 2002, Jackson, was specifically asked if someone was looking at Clayton at 3:25 p.m. would they also have been in a position to see the other people on the line. She responded in the affirmative. Clayton could not be viewed in isolation from the other people on the line. So there would not be any question of a mistake. MacDougal testified about seeing the other people on the line at that time and he specifically indicated on cross-examination that from where he was standing while he watched Clayton he could see the whole line. His testimony was not given mistakenly. As noted above, MacDougal testified that he observed the line that Clayton worked on January 29, 2002 from 3:15 p.m. to 3:30 p.m.; that when he first observed that line it was moving fairly well, everyone seemed to be working at a reasonable pace, and everybody had material to work with; that at about 3:25 p.m., before the buzzer sounded Clayton stopped working, took off her glasses, put them on the table, folded her arms, and looked directly at him; that he told Dykes to tell Clayton to go back to work because there were 5 minutes left in the shift, Clayton had three doors standing behind her that needed to be rolled, and the two framers were still framing; that he saw Dykes talk to Clayton but he could not hear what was said; that Clayton did not go back to work; that he saw Nettie Johnson framing and she never stopped working during that period of time; that there were doors on the line which had been rolled and so the employees further down the line from Clayton had work

for the last five minutes of the shift ["it probably took the last five minutes for them to finish up what was on the line" (transcript page 360)] but the line was left empty for the next day; that the testimony of Jackson, Johnson, Clayton and Coleman that the line was down at that time and no one was working was absolutely untrue; and that he saw with his own eyes that everyone on that line was working right up until the buzzer sounded, with the exception of Clayton. There was no lawful justification for disciplining Clayton for what occurred on January 29, 2002. MacDougal saw it as an opportunity to complete the task with respect to Clayton. In 2001 Clayton had worked for Croft for 23 years and the only written warning she could recall receiving before her June or July 2001 meeting with MacDougal was when in 1989 she took a day off so she could be with her sister after her niece died. In June or July 2001 MacDougal calls her a troublemaker and tells her that he can make it hard for her. In the seven or eight months that follow, Clayton has three written warnings, is suspended for three days, is removed from a position she bid on, and is terminated. The testimony of Clayton, Johnson, Jackson, and Coleman is credited. At the time in question, the line was down and no one was working. Dykes did not tell Clayton to get back to work. If he had, and Clayton refused , it would have been insubordination and that would have been used against her. Indeed Dykes, who is not a credible witness, did not even talk to Clayton at the time. It was obvious to everyone involved what was going on. Nonetheless, MacDougal saw it as an opportunity to terminate Clayton. The reason given for Clayton's termination is a pretext. The fact that the Respondent's management decided to lie under oath about the fabricated reason for the termination warrants an inference of animus and discriminatory motivation. The Respondent has not demonstrated that it would have terminated Clayton notwithstanding the protected conduct.

With respect to the first and second written warnings to Clayton, the General Counsel has made a prima facie showing. Has the Respondent demonstrated that the same action would have taken place notwithstanding the protected conduct? In defense of its action regarding the first warning the Respondent relies on Dykes and Cutrer. Both indicated their willingness to lie under oath about material facts. The documentation that the Respondent extracted from Coleman, in view of his testimony at the trial herein, is at best contradictory, if not an outright fabrication on the part of the Respondent. From a practical standpoint, forgetting for the moment the difficulties experienced that day, the Respondent did not show with reliable, credible evidence that anyone ever rolled approximately 270 of these doors, which no one denies are the most difficult doors that Croft has to roll, in a day or approximately 60 doors in a 105 minute period. When one takes into consideration the difficulties with the door on the day involved, it makes the Respondent's position all the more ridiculous. Again, the Respondent's justification is a pretext. And again The fact that the Respondent's management decided to lie under oath about the fabricated reason for the first written warning warrants an inference of animus and discriminatory motivation. The Respondent has not demonstrated that the same action would have taken place notwithstanding the protected conduct of Clayton. With respect to the second written warning to Clayton, again the Respondent relies on the testimony of Dykes. Not only is Dykes not a credible witness but his testimony regarding this warning is contradictory. Clayton's testimony about the second written warning is credited. The testimony of Dykes is not credited. The Respondent has not shown that there was any lawful justification for the second written warning to Clayton. The Respondent's justification is a pretext. And again The fact that the Respondent's management decided to lie under oath about the fabricated reason for the second written warning warrants an inference of animus and discriminatory motivation. The Respondent has not demonstrated that the same action would have taken place notwithstanding the protected conduct of Clayton. Since there was no lawful justification for the second warning to Clayton, there was no lawful justification for the three-day suspension.

Regarding the removal of Clayton from the material handler's position, as noted above, MacDougal testified that lead persons are responsible for making sure the product on the line

moves and ensuring that the product is produced, that the people are working, and that the line is moving.[22] When she became a material handler Clayton was assigned to Nadine Jackson's line. Yet the Respondent did not call Nadine Jackson to have her testify about the kind of job that Clayton did as a material handler supplying Jackson's line. Instead the Respondent chose to rely on the testimony of Dykes, who as noted above, on a number of occasions intentionally lied under oath about material facts. No documentation of any shortcomings on the part of Clayton while she performed as a material handler was introduced at the trial herein. Clayton's testimony that she was not aware that she did anything incorrect in the ten days that she performed the material handler's job is credited. Dykes testimony is not credited. Obviously whatever rights may exist under a collective bargaining agreement, the Respondent cannot remove someone from a position for an unlawful reason in violation of the Act. The Respondent has not demonstrated that it had a lawful justification for removing Clayton from the material handler's position. The Respondent has not demonstrated that the same action would have taken place notwithstanding the protected conduct of Clayton. The Respondent violated the Act as alleged in paragraphs 12, 13, 14, and 15 of the complaint.

Conclusions of Law

1. The Respondent is an employer engaged in commerce within the meaning of Sections 2(6) and (7) of the Act.

2. The Unions are labor organizations within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(a)(1) of the Act by threatening an employee with termination because of her union and protected activity.

4. By engaging in the following conduct the Respondent committed unfair labor practices contrary to the provisions of Section 8(a)(1) and (3) of the Act:

(a) Terminating Ora Mae Dawson on February 5, 2002, to discourage union and protected activity.

(b) Issuing a negative performance report to Anna Clayton in November 2001 to discourage union and protected activity.

(c) Scrutinizing Anna Clayton more closely in the performance of her job from September to discourage union and protected activity.

(d) Imposing more onerous working conditions on its employee Anna Clayton from September to December 2001 to discourage union and protected activity.

(e) Issuing written warnings to Anna Clayton on November 26, 2001, and on January 24 and 30, 2002 to discourage union and protected activity.

(f) Issuing Anna Clayton a three-day suspension on January 24, 2002, to

[22] As should be obvious, the fact that I am relying on this testimony of MacDougal does not change the fact that he is not a credible witness. As Chief Judge Hand pointed out in *National Labor Relations Board v. Universal Camera*, 179 F2d 749 at 754 (1950) "[i]t is not reason for refusing to accept everything that a witness says, because you do not believe all of it; nothing is more common in all kinds of judicial decisions than to believe some and not all."

discourage union and protected activity.

(g) Removing Anna Clayton from her desired material handler position on January 24, 2002, to discourage union and protected activity.

(h) Terminating Anna Clayton on January 30, 2002, to discourage union and protected activity.

5. The unfair labor practices set forth above are unfair labor practices affecting commerce within the meaning of Sections 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having discriminatorily discharged Ora Mae Dawson and Anna Clayton, it must offer them reinstatement and make them whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

The Respondent having discriminatorily suspended Anna Clayton, it must make her whole for any loss of earnings and other benefits, plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[23]

ORDER

Croft Metals, Inc., of McComb, Mississippi, its officers, agents, successors, and assigns, shall

1. Cease and desist from:

(a) Threatening an employee with termination because of her union and protected activity.

[23] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(b) Terminating employees to discourage union and protected activity.

(c) Issuing a negative performance report to an employee to discourage union and protected activity.

(d) Scrutinizing an employee more closely in the performance of her job to discourage union and protected activity.

(e) Imposing more onerous working conditions on an employee to discourage union and protected activity.

(f) Issuing written warnings to an employee to discourage union and protected activity.

(g) Suspending an employee to discourage union and protected activity.

(h) Removing an employee from a position to discourage union and protected activity.

(i) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Ora Mae Dawson and Anna Clayton full reinstatement to their former jobs (In the case of Anna Clayton, to her material handler's position.) or, if those job no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Ora Mae Dawson and Anna Clayton whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges, the unlawful November 2001 performance evaluation of Anna Clayton, the three unlawful written warnings to Anna Clayton dated November 26, 2002, and January 24 and 30, 2002, the unlawful suspension of Anna Clayton dated January 24, 2002, and the unlawful removal of Anna Clayton from her material handler's position, and within 3 days thereafter notify the Ora Mae Dawson and Anna Clayton in writing that this has been done and that the discharges or Anna Clayton's suspension will not be used against them in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in McComb, Mississippi copies of the attached notice marked "Appendix."[24] Copies of the notice, on forms provided by the Regional Director for Region 15, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 2001.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C.

_____
John H. West
Administrative Law Judge

[24] If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT threaten you with termination because of your union and protected activity.

WE WILL NOT terminate you to discourage union and protected activity.

WE WILL NOT issue a negative performance report to you to discourage union and protected activity.

WE WILL NOT scrutinizing you more closely in the performance of your job to discourage union and protected activity.

WE WILL NOT impose more onerous working conditions on you to discourage union and protected activity.

WE WILL NOT issue written warnings to you to discourage union and protected activity.

WE WILL NOT suspend you to discourage union and protected activity.

WE WILL NOT remove you from a position to discourage union and protected activity.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL within 14 days from the date of the Board's Order, offer Ora Mae Dawson and Anna Clayton full reinstatement to their former jobs (In the case of Anna Clayton, to her material handler's position.) or, if those job no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Ora Mae Dawson and Anna Clayton whole for any loss of earnings and other benefits resulting from their discharges, and from Anna Clayton's suspension, less any net interim earnings, plus interest.

WE WILL within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharges, the unlawful November 2001 performance evaluation of Anna Clayton, the three unlawful written warnings to Anna Clayton dated November 26, 2002, and January 24 and 30, 2002, the unlawful suspension of Anna Clayton dated January 24, 2002, and the unlawful removal of Anna Clayton from her material handler's position, and within 3 days thereafter notify Ora Mae Dawson and Anna Clayton in writing that this has been done and that the discharges or Anna Clayton's suspension will not be used against them in any way.

Croft Metals, Inc.

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

1515 Poydras Street, Room 610, New Orleans, LA 70112-3723

(504) 589-6361, Hours: 8 a.m. to 4:30 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (504) 589-6389.